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### Advisory Opinion 15-007

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2015). It is based on the facts and information available to the Commissioner as described below.

#### **Facts and Procedural History:**

On November 8, 2015, the Information Policy Analysis Division (IPAD) received an advisory opinion request from Richard Hodsdon, attorney for Washington County (County). In his letter, Mr. Hodsdon asked the Commissioner to issue an advisory opinion regarding the classification of certain data that the County maintains. The Commissioner asked for additional information, which Mr. Hodsdon provided on December 1, 2015.

The Commissioner wrote to David Snyder, attorney for the data requester, and offered him an opportunity to submit comments. The Commissioner received his comments on December 2, 2015.

Mr. Hodsdon provided a summary of the facts as follows:

Washington County commenced an action in eminent domain pursuant to Minnesota Statute [sic] Chapter 117 and as required by law obtained an independent appraisal. That independent appraisal was provided to the owner of the subject property as part of the negotiation and pre-condemnation process. That appraisal is not at issue here. However Washington County and the owner were unable to negotiate a resolution of the matter and the case proceeded through the eminent domain process including a hearing before a panel of condemnation commissioners. Rather than utilize and introduce the first appraisal as evidence in the condemnation proceeding the Washington County Attorney's Office directed Washington County Public Works to obtain a second appraisal, which was obtained solely for the purpose of litigating the eminent domain civil legal action.

The eminent domain action took place. The appraisal was introduced into evidence before the commissioners but was never filed in the district court because the Commissioner Award was not appealed to the district court. However the size of the ultimate award was such that the owner and his attorney are now seeking a substantial award in addition to the value of the taking in the form of attorney's fees and costs. That litigation claim is pending before the district court with a hearing to take place in January, 2016. The Washington County Attorney's office believes that one of the items that may be introduced into evidence at the hearing relevant to the litigation of the attorney fee award and costs is the appraisal it presented to the eminent commissioners.

The request has now been made for a copy of that appraisal and the person making the request contends under Minnesota Statute [sic] [section] 13.44, subd. 3 because the document was submitted to a condemnation commissioner its confidential status should now be changed to make it public.

**Issue:**

Based on Mr. Hodsdon's opinion request, the Commissioner agreed to address the following issue:

Pursuant to Minnesota Statutes, Chapter 13, may the Washington County Attorney's Office classify an appraisal as confidential or protected nonpublic under Minnesota Statutes, section 13.39?

**Discussion:**

Pursuant to Minnesota Statutes, Chapter 13, government data are public unless otherwise classified. (Minnesota Statutes, section 13.03, subdivision 1.)

Minnesota Statutes, section 13.44, subdivision 3(a), classifies appraisals made for the purposes of the purchase or condemnation of land by a government entity as confidential or protected nonpublic. Not public appraisal data may become public under certain circumstances, one of which is submission to a court-appointed condemnation commissioner. (See subdivision 3(c).)

Minnesota Statutes, section 13.39, allows government entities to classify data as confidential or protected nonpublic when there is a pending civil legal action. Subdivision 1, provides that a "pending civil legal action includes, but is not limited to, judicial, administrative or arbitration proceedings. Whether a civil legal action is pending shall be determined by the chief attorney acting for the government entity."

Here, an eminent domain matter advanced through negotiations, a court-appointed panel of commissioners, and is now in district court. The broad and express definition of "pending civil legal action" encompasses this type of proceeding.

The next question is whether the chief attorney acting for the entity has determined that the civil legal action is pending. (See Advisory Opinion 99-016.) Here, Mr. Hodsdon provided a letter from Washington County Attorney Peter Orput, who wrote: "I have determined this appraisal is part of a case that is still an open, active, and in pending litigation as that term is used in Minnesota Statutes [section] 13.39."

On behalf of the data requester, Mr. Snyder argued that because the appraisal data are classified as public pursuant to section 13.44, subd. 3, section 13.39 is not applicable. The Commissioner has previously opined on the operation of section 13.39 (see Advisory Opinions 94-006, 95-048 and 98-017) and in Advisory Opinion 99-029, he stated, "whether data may be classified as civil investigative data is substantially the discretion of the government entity's chief attorney." Because the chief attorney for Washington County determined that there is a pending civil legal action, of the type defined by section 13.39, the County may temporarily classify public appraisal data as confidential and/or protected nonpublic. Pursuant to section 13.39, subdivision 3, once the data become inactive or become part of a court record, the data will become public.

**Opinion:**

Based on the facts and information provided, the Commissioner's opinion on the issue Mr. Hodsdon raised is as follows:

The Washington County Attorney's office may classify public appraisal data as confidential and/or protected nonpublic pursuant to Minnesota Statutes, section 13.39.

A handwritten signature in black ink, appearing to read "Matthew Massman", with a stylized, flowing script.

Matthew Massman  
Commissioner  
December 22, 2015